

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

304.01.08 MEDICARE CATASTROPHIC COVERAGE ACT TRANSFER POLICY

The Medicare Catastrophic Coverage Act of 1988 (MCAA) repealed the transfer of resources penalty for non-institutionalized individuals. New transfer of resources policy created under the MCAA applies only to institutionalized individuals as defined below, who transfer resources on or after July 1, 1988 through August 10, 1993. Transfers that occur after August 10, 1993, are evaluated under OBRA-93 transfer policy.

Definition of Institutionalized Individual

An institutionalized individual is an individual who is a nursing facility inpatient, an inpatient at a medical institution receiving a nursing facility level of care or a recipient of home and community-based waiver services. ICF-MR residents are not included in this definition.

The transfer penalty resulting in ineligibility, as defined below, applies to nursing facility services, medical institution services where the level of care provided is equivalent to nursing facility care. An institutionalized individual remains eligible for all other Medicaid services while a transfer penalty is in effect, provided eligibility is met on all other factors.

Transfer Penalty

An institutionalized individual, who, at any time during the 30-month period immediately before the individual's application for medical assistance, disposed of resources for less than fair market value shall be ineligible for nursing facility services beginning with the month in which resources were transferred. An institutionalized individual is also prohibited from transferring resources during the period of institutionalization, unless an exception applies.

Effective October 1, 1989, the transfer penalty also applies to a community spouse who transfers resources within the 30-month period preceding application and/or during the time his-her spouse remains institutionalized. A transfer of resources by a community spouse to another individual will result in a transfer penalty applying to the institutionalized spouse.

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The Penalty Period

The period of ineligibility shall be equal to the lesser of:

- 30 months, or
- The number of months required to deplete the uncompensated value (UV) based on the total UV of the transferred resources divided by the average monthly cost of nursing facility services to a private pay patient.

30-Month Penalty

The 30-month period is calculated using the month of a transfer as the first month continuing through the 30th consecutive month, provided the transfer occurred on or after July 1, 1988. The 30-month period of ineligibility is imposed unless the UV/ private-pay calculation results in a period of ineligibility less than 30 months.

Private Pay Calculation

The private pay calculation is based on a statewide average private pay cost of \$1,456.00 per month. In calculating the period of ineligibility, divide the UV by \$1,456.00 to determine the number of month that an individual will be ineligible for nursing home services. All calculations are rounded down to the nearest whole dollar.

Example: If the total UV is \$20,000, then \$20,000 divided by \$1,456 = 13.73. Rounding down, the period of ineligibility would be 13 months, which is less than the 30-month penalty.

Determining the Period of Ineligibility

The month of the transfer is always “month one” of the period of ineligibility. As a result, the penalty period may be expired or near expiration as of the month of the application.

Example: A transfer with UV of \$5,000 occurs 7/5/88. Using the private pay calculation, the period of ineligibility for nursing facility services is 3 months, July through September. If the application is filed on or after October 1, 1988, the penalty period will have expired, although eligibility for all other Medicaid services is possible in the retroactive period.

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If the UV does not result in ineligibility for at least one month, the transfer will not count.

Example: If the transfer is for \$1,000, which is less than the average private pay rate, no penalty applies for the month of the transfer.

Each transfer is evaluated based on the month the transfer occurred. If more than one transfer occurs in the same month, the UV is combined and the penalty period calculated on total UV for a particular month. If transfers crossover into different months, each transfer is evaluated separately and UV is not combined. The possible results would be overlapping penalty periods.

Exceptions to Transfer of Home Property

The transfer penalty will not apply to the transfer of home property by an institutionalized individual to the following family members:

- The individual's spouse or child under age 21 **or** a disabled or blind adult child; or
- A sibling who is part owner of the home who lived in the home for one (1) year before the individual entered the nursing facility; or
- A child who lived in the home for up to two (2) years before the individual entered a nursing facility and provided care to the individual which permitted the individual to remain at home.

Exceptions to Transfer of Any Type of Resource Other Than the Home

The transfer penalty will not apply to the transfer of any type of resource in the following situations:

- Resources are transferred to or from the individual's spouse. Effective October 1, 1989, a transfer of assets from a community spouse to another individual will result in a penalty charged to the institutionalized spouse.

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Exceptions to Transfer of Any Type of Resource Other Than the Home (Continued)

- Resources are transferred to the institutionalized individual's child who is disabled or blind.
- Satisfactory evidence is presented to show that the individual intended to dispose of the resource(s) either at fair market value or for other valuable consideration, **or**, that resource(s) were transferred exclusively for a purpose other than to qualify for Medicaid.
- Denial of eligibility would result in undue hardship.
- The resource was excluded under ongoing policy at the time for the transfer.
- The resource was transferred by an individual other than the institutionalized applicant/recipient and that person had no legal authorization to act in the applicant's or recipient's behalf at the time of the transfer.

Notice of Transfer of Resources

The client will be notified via DOM-322A, Notice of Transfer of Resources, regarding countable transfers and the penalty period. The notice will allow the client or representative 10 days to present evidence to show that the transfer should not count. Evidence should include a written rebuttal plus any pertinent documentary evidence. If no rebuttal is offered, the penalty will be applied and the appropriate adverse action notice issued to deny or terminate payment of nursing home services only. The individual remains eligible for all other Medicaid services if the transfer penalty is the only factor of ineligibility. If the individual is ineligible on other factors as well as the transfer, the application or case must be denied or terminated.

Rebuttal Process

Written rebuttals along with the regional office decision regarding acceptability are to be submitted to state office. The material submitted should include the rebuttal, a copy of the transfer notice issued to the client and a summary of circumstances surrounding the transfer. The regional office will be notified of the final decision.

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Acceptable Rebuttals

Factors which may indicate that a transfer was made for some purpose other than establishing Medicaid eligibility are listed below. The presence of one or more of the following factors may result in an acceptable rebuttal:

- The occurrence **after** a transfer of resources of one or more of the following:
 - Traumatic onset (e.g., traffic accident of disability or blindness;
 - Diagnosis of previously undetected disabling condition;
 - Unexpected loss of other resources which would have precluded Medicaid eligibility;
 - Unexpected loss of income (including deemed income) which would have precluded Medicaid eligibility.

In general, if the client was healthy and/or financially secure at the time of the transfer, with no expectation of future Medicaid need, then an acceptable rebuttal may be established.

- Total countable resources that would have been below the resource limit at all times from the month of transfer through the present month even if the transferred resource had been retained;
- Court-ordered transfer;
- Resource(s) sold at less than current market value in order to obtain cash quickly to meet expenses or repay a legal debt.

Undue Hardship

The transfer penalty can be waived if a period of ineligibility would result in undue hardship for the institutionalized individual. Undue hardship exists if a Medicaid denial of nursing home care would result in the individual's inability to obtain medical care. Each case situation must be reviewed individually to determine if undue hardship exists but the provision is geared toward financially and medically needy individuals with no possible means of recovering their transferred resource(s).

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Return of a Transferred Resource

If a transferred resource is returned to or if compensation is received by the institutionalized individual, the UV is no longer an issue or is reduced as of the date of return. The resource of compensation is evaluated according to normal resource rules in the month of the return. Any portion of a transferred resource that is not returned continues to count as UV which means the penalty period must be re-evaluated.

Recalculation of a Penalty Period

A penalty period must be recalculated from the month a portion of the resource is returned or additional compensation is received.

Example: A transfer of \$10,000 occurred in 10/88 resulting in a 6-month penalty period, or October 1988 – March 1989. In January 1989, \$5,000 is returned to the institutionalized client. The penalty period is then recalculated using UV of \$5,000 transferred in 10/88 which results in a revised period of ineligibility of 3 months or October 1988 – December 1988. .

If the full resource is returned, normal resource rules apply the month of the transfer.

Transfer Penalty Involving SSI Months

The transfer penalty can be imposed during months that an individual receives SSO or is SSI-eligible in a nursing home.

Example: An ABD application is filed in December 1988 and a transfer is discovered during the application process. The applicant had entered the nursing home in October 1988 as an SSI eligible and SSI eligibility continued until 12/31/88. The transfer results in a 4-month penalty period. The penalty can be imposed for October 1988 – January 1989 even though SSI eligibility existed October 1988 – December 1988. This would mean no vendor payment would be authorized for the 4-month penalty period.

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As a result, specialists need to postpone sending notices on an SSI to ABD applicant advising of eligibility based on SSI until eligibility for ABD is determined which excludes any transfers for the SSI months.